

REMARKS

1. Status of claims

After entry of the above amendment, claims 1-10 and 12-35 are pending.

2. Support for the amendment

The current amendment of claim 1 finds support in the specification at p.3, line 30-p. 4, line 1; p. 18, lines 6 and 20-21. No new matter has been added by this amendment.

3. Claim rejections under 35 U.S.C. §103

Claims 1-10 and 12-35 are rejected under 35 U.S.C. §103(a) as being unpatentable over Rodgers et al., U.S. Pat. No. 6,517,776 (“Rodgers”) or Cai et al., U.S. Pat. No. 6,527,976 (“Cai”) or Jerdee et al., U.S. Pat. No. 6,333,087 (“Jerdee”). Because the Declaration and Exhibit filed September 26, 2003 under 37 CFR 1.131 of Anne Ebbesen (“the Declaration”) demonstrates reduction to practice of a claimed method in a World Trade Organization country after January 1, 1996 and before November 3, 2000 effectively antedating Cai and Rodgers and removing these references as valid prior art, Applicants respectfully traverse this rejection.

The Examiner alleges that the Declaration and Exhibit attached thereto did not show a reduction to practice of the claimed invention. Applicants respectfully disagree and submit that the Declaration reported performance of a claimed method; however, to further clarify this point, Applicants present herewith a Second Declaration under 37 CFR 1.131 of Anne Ebbesen (the “Second Declaration”) and a Second Exhibit.

The Second Declaration and cited passages in the Second Exhibit report the preparation of a carton comprising an oxygen scavenging layer having an interior and exterior surface, exposing the carton's interior surface to hydrogen peroxide and an initiating factor (in this case, ultraviolet light), filling the carton with water, and monitoring oxygen scavenging by the oxygen scavenging layer of the carton. Thus, the Second Declaration and Second Exhibit show a reduction to practice of the claimed method which antedates Rodgers and Cai. Because reduction to practice of only a single species is sufficient to show reduction to practice of an entire genus for purposes of 37 CFR 1.131 (MPEP 715.02), Applicants respectfully request the rejection over Rodgers and Cai be withdrawn.

With respect to the remaining reference, U.S. Patent 6,333,087 ("Jerdee"), and in light of the amendment, the Applicants submit that Jerdee does not provide a basis for a proper 103(a) rejection. Preliminary to the following discussion of the rejection under Jerdee, Applicants wish to direct the Examiner's attention to MPEP §714.03. Turning to the rejection proper, first, Jerdee does not teach or suggest all the claim limitations, MPEP §2143.03. Specifically, Jerdee does not teach or suggest the claimed limitation of reducing the induction period of oxygen scavenging. Second, Jerdee does not contain a motivation to modify its teachings with a reasonable expectation of success to arrive at the claimed invention. MPEP §2143.01 and MPEP §2143.02. Jerdee teaches the filling of oxygen scavenging packaging articles under cold-filled, non-aseptic conditions (col. 9, lines 14-18), and provides a general description of a sterilization technique (aseptic packaging conditions) at col. 9, lines 19-27. However, Jerdee does not provide an example of using aseptic packaging with oxygen scavenging packaging articles and thus, Jerdee did not recognize the prospect that the sterilization technique could also serve to reduce the oxygen scavenging induction period. Therefore, Jerdee alone, without the benefit of

impermissible hindsight vision, does not disclose nor teach reducing the induction period of oxygen scavenging using the claimed method. Accordingly, Applicants respectfully request that the rejection in light of Jerdee be withdrawn.

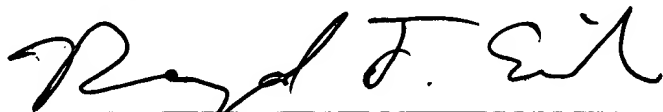
Because Rodgers and Cai may not be considered as a basis for an obviousness rejection, based on the antedating Declaration and the Second Declaration, Jerdee is the only remaining reference indicating the state of the art at the time the invention was made. As discussed above, the state of the art as taught by Jerdee alone does not teach or suggest all the claim limitations and is not broad enough to either suggest modifying Jerdee or provide a reasonable expectation of success. Therefore, Jerdee alone is not sufficient basis for a rejection under 103(a). Accordingly, Applicants respectfully request that this rejection be withdrawn.

4. Final remarks

In conclusion, Applicants respectfully submit that all pending claims 1-10 and 12-35 as amended are in condition for allowance. The Examiner is invited to contact the undersigned patent agent at (713) 934-4065 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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